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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 ANTHONY CROSS,

10 Petitioner,

11 vs.

12 RENEE BAKER, et al.,

13 Respondents.  
14

Case No. 3:14-cv-00434-RCJ-VPC

**ORDER**

15 Before the court are the petition for a writ of habeas corpus (ECF No. 4), respondents'  
16 answer (ECF No. 41), and petitioner's reply (ECF No. 44). The court finds that petitioner is not  
17 entitled to relief, and the court denies the petition.

18 In prison disciplinary proceedings, petitioner was found guilty of assault and battery. Ex. 3  
19 (ECF No. 20-3). Petitioner then filed a habeas corpus petition in the state district court. Ex. 4 (ECF  
20 No. 20-4). The state district court denied the petition. Ex. 12 (ECF No. 20-12). Petitioner  
21 appealed, and the Nevada Supreme Court affirmed. Ex. 14 (ECF No. 20-14).

22 Petitioner then commenced this action. The petition (ECF No. 4) originally contained seven  
23 grounds for relief. The court dismissed grounds 4, 5, and 7 upon screening because they clearly  
24 were without merit. ECF No. 3. Reasonable jurists would not find the court's determination to be  
25 debatable or wrong, and the court will not issue a certificate of appealability for grounds 4, 5, and 7.

26 Petitioner then filed a motion to dismiss ground 6 (ECF No. 13). After he reviewed the  
27 recording of the prison disciplinary proceedings, he concluded that this ground had no merit. The  
28 court granted this motion. ECF No. 36.

1 Respondents also filed a motion to dismiss (ECF No. 18). At first, they argued that  
2 petitioner had not exhausted his state-court remedies for grounds 1 and 2. They later admitted that  
3 ground 1 was exhausted. The court found that part of ground 2 lacked merit on its face and that the  
4 remaining part of ground 2, a claim of a violation of equal protection, was not exhausted. ECF No.  
5 36. Petitioner filed a motion for reconsideration (ECF No. 37). Based upon that motion, the court  
6 realized that the unexhausted part of ground 2 actually was a claim of an error in the state habeas  
7 corpus proceedings, which is not addressable in federal habeas corpus. The court dismissed ground  
8 2 in its entirety. ECF No. 40. Reasonable jurists would not find the court's determination to be  
9 debatable or wrong, and the court will not issue a certificate of appealability for ground 2.

10 Grounds 1 and 3 remain.

11 Congress has limited the circumstances in which a federal court can grant relief to a  
12 petitioner who is in custody pursuant to a judgment of conviction of a state court.

13 An application for a writ of habeas corpus on behalf of a person in custody pursuant to the  
14 judgment of a State court shall not be granted with respect to any claim that was adjudicated  
on the merits in State court proceedings unless the adjudication of the claim—

15 (1) resulted in a decision that was contrary to, or involved an unreasonable application of,  
16 clearly established Federal law, as determined by the Supreme Court of the United States; or

17 (2) resulted in a decision that was based on an unreasonable determination of the facts in  
light of the evidence presented in the State court proceeding.

18 28 U.S.C. § 2254(d). “By its terms § 2254(d) bars relitigation of any claim ‘adjudicated on the  
19 merits’ in state court, subject only to the exceptions in §§ 2254(d)(1) and (d)(2).” Harrington v.  
20 Richter, 562 U.S. 86, 98 (2011).

21 Federal habeas relief may not be granted for claims subject to § 2254(d) unless it is shown  
22 that the earlier state court's decision “was contrary to” federal law then clearly established in  
the holdings of this Court, § 2254(d)(1); Williams v. Taylor, 529 U.S. 362, 412 (2000); or  
23 that it “involved an unreasonable application of” such law, § 2254(d)(1); or that it “was  
based on an unreasonable determination of the facts” in light of the record before the state  
24 court, § 2254(d)(2).

25 Richter, 562 U.S. at 100. “For purposes of § 2254(d)(1), ‘an unreasonable application of federal  
26 law is different from an incorrect application of federal law.’” Id. (citation omitted). “A state  
27 court's determination that a claim lacks merit precludes federal habeas relief so long as ‘fairminded  
28 jurists could disagree’ on the correctness of the state court's decision.” Id. (citation omitted).

1 [E]valuating whether a rule application was unreasonable requires considering the rule's  
2 specificity. The more general the rule, the more leeway courts have in reaching outcomes in  
case-by-case determinations.

3 Yarborough v. Alvarado, 541 U.S. 652, 664 (2004).

4 Under § 2254(d), a habeas court must determine what arguments or theories supported or, as  
5 here, could have supported, the state court's decision; and then it must ask whether it is  
6 possible fairminded jurists could disagree that those arguments or theories are inconsistent  
with the holding in a prior decision of this Court.

7 Richter, 562 U.S. at 102.

8 As a condition for obtaining habeas corpus from a federal court, a state prisoner must show  
9 that the state court's ruling on the claim being presented in federal court was so lacking in  
justification that there was an error well understood and comprehended in existing law  
beyond any possibility for fairminded disagreement.

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11 Id. at 103.

12 In ground 1, petitioner alleges that he was denied due process because the hearing officer  
13 would not allow petitioner to call witnesses. The witnesses in question were the investigating  
14 officer who wrote the notice of charges, a correctional officer and a senior correctional officer who  
15 responded to calls that an inmate had been attacked, and the victim. Petitioner wanted to confront  
16 the victim, and he wanted to examine the prison officers about who told them about the attack on  
17 the victim and how they investigated the matter. The hearing officer denied the request for the  
18 investigator's testimony because all the information that the investigator had was in the notice of  
19 charges. The hearing officer denied the request for the correctional officers' testimony because they  
20 did not witness the attack on the inmate; they only responded when told about the attack. The  
21 hearing officer denied the request for the victim's testimony because of the possibility of pressure  
22 on the victim. Ex. 16 (ECF No. 43).<sup>1</sup>

23 Confrontation and cross-examination present greater hazards to institutional interests. If  
24 confrontation and cross-examination of those furnishing evidence against the inmate were to  
25 be allowed as a matter of course, as in criminal trials, there would be considerable potential  
26 for havoc inside the prison walls. Proceedings would inevitably be longer and tend to  
unmanageability. These procedures are essential in criminal trials where the accused, if  
found guilty, may be subjected to the most serious deprivations, . . . or where a person may  
lose his job in society, . . . . But they are not rights universally applicable to all hearings. . . .

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28 <sup>1</sup>This exhibit is a compact disc filed manually with the court.

1 Rules of procedure may be shaped by consideration of the risks of error, . . . and should also  
2 be shaped by the consequences which will follow their adoption. Although some States do  
3 seem to allow cross-examination in disciplinary hearings, we are not apprised of the  
4 conditions under which the procedure may be curtailed; and it does not appear that  
5 confrontation and cross-examination are generally required in this context. We think that the  
6 Constitution should not be read to impose the procedure at the present time and that  
7 adequate bases for decision in prison disciplinary cases can be arrived at without  
8 cross-examination.

9 Wolff v. McDonnell, 418 U.S. 539, 567-68 (1974) (footnotes and citations omitted). See also  
10 Baxter v. Palmigiano, 425 U.S. 308, 322-23 (1976). The Nevada Supreme Court summarily held,  
11 “Confrontation and cross-examination in prison disciplinary proceedings are not required because  
12 these procedures present ‘greater hazards to institutional interests.’” Ex. 14, at 2 (quoting Wolff,  
13 418 U.S. at 567) (ECF No. 20-14, at 3). Given that the Supreme Court of the United States has not  
14 clearly established that petitioner has a right to confrontation and cross-examination in prison  
15 disciplinary proceedings, the Nevada Supreme Court’s decision cannot be contrary to, or an  
16 unreasonable application of, clearly established federal law. Carey v. Musladin, 549 U.S. 70, 77  
17 (2006). Ground 1 is without merit.

18 Reasonable jurists would not find this conclusion to be debatable or wrong, and the court  
19 will not issue a certificate of appealability for ground 1.

20 In ground 3, petitioner alleges that the evidence at the disciplinary hearing was insufficient  
21 to find him guilty. On this issue, the Nevada Supreme Court held, “Further, some evidence supports  
22 the decision by the prison disciplinary hearing officer, Superintendent v. Hill, 472 U.S. 445, 455  
23 (1985), and therefore, appellant failed to demonstrate that he was entitled to relief.” Ex. 14, at 2  
24 (ECF No. 20-14, at 3). The court has reviewed the recording of the disciplinary hearing and the  
25 documents in support of the disciplinary charges, which were filed under seal. The Nevada  
26 Supreme Court applied Hill reasonably. Ground 3 is without merit.

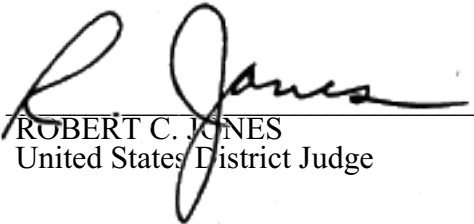
27 Reasonable jurists would not find this conclusion to be debatable or wrong, and the court  
28 will not issue a certificate of appealability for ground 3.

Petitioner has filed a motion for leave to file supplemental points and authorities (ECF No.  
47), and respondents have filed a response (ECF No. 48). The court denies petitioner’s motion for  
the reasons stated in respondents’ response.

1 IT IS THEREFORE ORDERED that the petition for a writ of habeas corpus (ECF No. 4) is  
2 **DENIED**. The clerk of the court shall enter judgment accordingly and close this action.

3 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

4 DATED: October 9, 2017.

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7 ROBERT C. JONES  
United States District Judge  
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